the accident only because the female passenger opened the door when it was not safe to do so. In my opinion she was guilty of negligence in opening the door without first taking reasonable care to see that her act would not endanger any other vehicle or road user; and her negligence was the sole cause of the accident. It is contended by counsel for the plaintiff that the defendant was negligent in that he stopped on the wrong side of the road. In my view there is no substance in this contention. It is further contended by counsel for the plaintiff that the defendant was negligent in that he allowed the passenger to open the door of the taxi when it was unsafe to do so. In my judgment, the defendant was not under a duty to third persons to see that his passenger did not commit an act of negligence in leaving the taxi. For the above reasons I give judgment for the defendant with costs.

It is necessary for me to state my assessment of the damages in case the plaintiff wishes to appeal from this judgment. Special damages have been agreed at $540. On the medical evidence before me I assess the general damages for the laceration of the right forearm, which was five inches long, at $800.

Claim dismissed.

Solicitors: *Murphy & Dunbar*; *Braddell Bros.*

RAFFLES HOTEL LTD. v. L. RAYNER SAME v. MALAYAN BANKING LTD.

[O.C.J. (Winslow J.) October 13, 1964]
[Singapore — Suit Nos. 848 and 942 of 1964]

Company — Appointment of director — Company entitled to undivided loyalty of its directors — Whether persons who are not members of a company or parties to the articles can acquire rights under articles — Injunction.

Landlord and tenant — Provision against sub-letting of premises without consent of landlord — Consent not to be arbitrarily withheld.

Under the terms of the lease of premises occupied by the plaintiff company the tenant covenanted not to assign or sublet without the previous licence in writing of the lessors provided that if the assignee or sublessee be a limited company no consent shall be given unless the articles thereof contained a provision that from time to time during the continuance of the lease the lessors shall have power to appoint a director not subject to retirement by rotation but any director so appointed shall not be a person interested in or connected with any business of a similar nature to the lessees. The articles of the plaintiff company provide that "the lessors may from time to time so long as the property so leased is held by the company appoint himself or one of themselves or any other person to be a director of the company". Malayan Banking Limited, the present lessors, appointed Leslie Rayner, the defendant in Suit 848 to be a director of the company. Mr. Rayner sought to exercise his rights as a director and to inspect the books of the company; but such inspection was refused and an *ex parte* injunction obtained against him restraining him from disclosing any information relating to the affairs of the company to any person or persons entitled to appoint a director under the terms of the articles of the company. Malayan Banking Limited then renounced Mr. Rayner and appointed themselves as directors. Suit 942 of 1964 was thereupon commenced in which certain declarations as to the validity of the appointment were sought and an *ex parte* injunction restraining the Malayan Banking Limited from exercising its powers as a director of the plaintiff company was obtained. Malayan Banking Limited through their subsidiary Malayan Finance Company Limited have a controlling interest in the Goodwood Park Hotel. A motion was brought to continue the injunction.

Held: (1) as the defendants were not members of the plaintiff company or parties to the articles of association, they could acquire no rights under the articles and although there was a clause against subletting, the consent could not be arbitrarily withheld;

(2) there was a triable issue as to whether the defendants should be permitted to exercise their rights as director and the court was not precluded from making a declaration on the validity of the appointment or from restraining the exercise of powers under an appointment which it considered should not have been made;

(3) the motion should be granted on the plaintiff's undertaking to pay damages for any loss sustained by the defendants should the latter succeed at the trial.

Cases referred to:—

(1) *Boulting* v. *Association of Cinematograph, Television and Allied Technicians* [1963] 2 Q.B. 606.

(2) *Cory* v. *Reindeer Steamship* (1915) 31 T.L.R. 531.

(3) *Aldebert* v. *Leaf* (1864) 3 New Reports 455.

(4) *Eley* v. *Positive Government Security Life Assurance Ltd.* (1876) 1 Ex.D. 20.

(5) *Treloar* v. *Biggs* 9 Ex. Cases 151.

MOTION.

M. Karthigesu for the plaintiffs.

G. S. Hill for the defendants.

Cur. Adv. Vult.

Winslow J.: It would seem well-established on the authority of *Bouling* v. *Association of Cinematograph, Television and Allied Technicians* (1) that a company is entitled to the undivided loyalty of its directors. A director who is a nominee of someone else should be left free to exercise his best judgment in the interests of the company he serves and not in accordance with the directions of his patron. If the company is not prepared to relax the rule then an action for an injunction would normally lie to restrain a nominee director from acting in any manner adverse to the interests of the company.

I am not bound to say, on an interlocutory application, whether the plaintiffs, in cases like these, would be likely to succeed at the trial though the probability of success would naturally enhance the merits of the application. If it were not for the fact that the continuance of the injunction in Suit No. 848 of 1964 is no longer required on the ground that the defendant has ceased to be a director and thereby removed the reasons for the apprehension originally felt when

the writ was issued, I would be inclined to say that the *status quo* should be maintained until the trial as was done in *Cory* v. *Reindeer Steamship*,[2] if I were satisfied that there was ground for apprehension that irreparable injury would result.

I am sure that the defendant would not consciously have acted disloyally in respect of his fiduciary duties to the plaintiff company. There would however have been a real likelihood of a serious conflict between his duties as such and his duties as solicitor to the plaintiffs' landlords, Malayan Banking Ltd., of which he was also nominee director on the plaintiffs' board, which might have rendered his position intolerable and not merely embarrassing. In the analogy which I, at one stage, thought could be drawn between this situation and the constitutional position of members or nominees of the Government who are sometimes appointed to statutory boards to "keep an eye" on them, so to speak, I think the reason why no objection is usually taken by statutory boards to any possible disclosure of their affairs to the Government lies in the fact that, as statutory creations, they voluntarily abandon the rule, on which they presumably could rely, in favour of the Government which is usually responsible to the legislature for the activities of the statutory board in question. The analogy is therefore not quite the same.

In the circumstances, as the application is not being pursued, all future proceedings are hereby stayed but I have to decide whether the plaintiffs should pay the defendant's costs.

In order to decide this I will have to consider whether there were reasonable grounds for apprehension of irreparable injury in the first instance. As far back as January, 1964, the defendant, on behalf of the lessors, asked for particulars of sub-tenancies of the premises in question. No decision was ever taken by the plaintiffs, for reasons which are not clear, whether to supply them or not and, in fact, they were never supplied. In May, 1964 the defendant returned to the charge by asking for inspection of the accounts of the plaintiffs which would presumably have disclosed the particulars of the sub-tenancies he required on behalf of the lessors. He did not however clarify that this was all that he really required nor did the plaintiffs ask him why he wanted inspection of accounts although it did occur to them that the erstwhile question of sub-tenancies was involved. They however felt apprehensive as to the disclosure of all their accounts to a third party, i.e. the lessors, and asked for an undertaking that these would not be disclosed. This was not forthcoming.

While I think that there was some cause for alarm on the part of the plaintiffs at the threat to inspect all their accounts, I am also of the view that the principal object was merely to ascertain sub-tenancies. If the latter was the only fear the plaintiffs had, then, any damage or injury likely to result from the discovery and disclosure would be non-tortious as it would be, or have been, of the nature of a *damnum sine injuria*. But as against this, they say they had other fears as well of injury resulting from possible disclosure of their accounts.

The case of *Aldebert* v. *Leaf* [3] decided that the court will not restrain future acts unless it is plain that they will be of a wrongful nature.

Here, the act complained of was the proposed inspection of the plaintiffs' accounts by a director and possible future disclosure thereof to third parties. Inspection itself cannot be a wrongful act as a director has a right to inspect the accounts and I cannot see how such an act can be said to be of a wrongful nature. But it is said that disclosure of information to third parties after such inspection would be wrongful and cause irreparable injury to the plaintiffs. Whilst disclosure may be disloyal I cannot see that disclosure, *inter alia*, of a breach or breaches of covenants in the lease between the parties can be said to cause illegal harm. Such harm would be non-tortious because, as I have earlier stated, it would be a *damnum sine injuria* owing to the fact that the landlords would be entitled to take appropriate action against any possible breaches by the plaintiffs. Supposing the defendant were to unearth a fraud of some kind or an evasion of tax on the part of the plaintiffs would the plaintiffs be heard to complain that disclosure is disloyal as well as unlawful? Should he keep his mouth shut and be indicted jointly with the other directors as being a party to a criminal act?

Further, I think it can be implied from the terms of clause 14 that the plaintiffs relaxed the rule in their favour by agreeing that no consent should be given to sub-letting unless the articles provide for the landlords' representation on the plaintiffs' board.

Further, the plaintiffs have not made it clear what exactly is the nature of the irreparable injury they would be, or would have been likely to suffer. Even Mr. Booker, when pressed repeatedly on this point, was unable to pinpoint the injury which he feared. He merely thought that the violation of the secrecy of the plaintiffs' accounts would be harmful. He did not say in exactly what way this would lead to irreparable injury and I am left in serious doubt as to what exactly the injury was that was feared. Mr. Booker was vague about this.

Finally, I find that no undertaking has been given as it should have been, in respect of any

damage sustained by the defendant had the injunction continued.

I do not think it is necessary for me to deal with this point. Had there been any question of continuing the injunction I would have insisted on an undertaking but no such question now arises. It was no doubt assumed that the defendant could not possibly sustain any damage by virtue of the restraint sought to be imposed. One has only to mention the fact of his removal from the office of director to appreciate the possibilities of resultant damage.

In all the circumstances I am of the opinion that the injunction should be discharged with costs to the defendant.

It should be noted that in this suit the validity of the appointment of the defendant as director is not impugned.

Now, with regard to Suit No. 942 of 1964, however, different considerations arise. I am asked to continue an injunction restraining the landlords (Malayan Banking Ltd.) from exercising their powers as a director of the plaintiff company.

In my opinion article 77 does not confer any right on the defendants to appoint a director to the plaintiffs' board of directors. This follows from the decision in *Eley* v. *Positive Government Security Life Assurance Ltd.*[4] and the defendants, not being members of the plaintiff company, or parties to the articles, can acquire no rights under the latter's articles of association. Moreover, even if article 77 applies, it is doubtful whether a legal person can properly be appointed a director, having regard to the language of article 77 which appears to contemplate the appointment of a human being as opposed to a legal person. Mr. Karthigesu however does not make any complaint under this head.

Whether the landlords have a right to appoint a director arises for consideration, however, under clause 14 of the lease of 1925 in the sense that no consent to assign or sub-let need be given in the case of an assignee or sub-lessee who is a limited company unless the articles thereof provide for the appointment by the landlords of a director. This clause imposes a disqualification on the person appointed in that it disqualifies any person interested in or connected with business of a similar nature to that of the plaintiffs.

Although there appear to be grounds for saying that the defendants may be so interested or connected by virtue of their subsidiary's interest in Goodwood Park Hotel I am not so sure that this clause gives the landlords, in the first place, any right to appoint a director. They must withhold their consent to an assignment or a sub-letting if the articles do not make provision as aforesaid. It is therefore only when they are confronted with an application for their consent that the landlords can look to the articles to see if provision has been made as required in clause 14. Apart from such a situation the clause does not seem to confer any right at all.

Mr. Hill's contention is that the appointment is good and cannot be undone because it has already been made. Be that as it may, I think that there is a triable issue as to whether the defendants should be permitted to exercise their powers as director. While clause 14 may not confer a contractual right on the plaintiffs it does not seem to confer one on the defendants either.

As was held in *Treloar* v. *Bigge* [6] a clause against sub-letting without consent, such consent not to be arbitrarily withheld, is not an absolute covenant although it is a qualified one. If consent is arbitrarily withheld the tenant can take steps to remedy the position. Similarly it would seem that, though the defendants may, arguably, have some kind of a claim to appoint a director they cannot appoint someone who may be disqualified under the proviso. Further, they seem to have no right under article 77 to appoint a director, and the fact that an appointment has been made does not, I think, prevent the plaintiffs from protesting against such an appointment and obtaining, if they can, at least a declaration that it is bad.

The courts cannot rectify the articles but they are not precluded from making a declaration on the validity of the appointment, or from restraining the exercise of powers under an appointment which they may consider should not have been made.

I therefore grant the order in terms of the motion subject to the plaintiffs' undertaking to pay damages for any loss sustained by the defendants should the latter succeed at the trial.

I would like it to be borne in mind that my opinions on such questions of law as may have arisen are not, in any way, intended to be final or binding on the court of trial as I am only considering whether, in this suit, the injunction should continue.

Costs will be costs in the cause.

Order in terms.

Solicitors: *Allen & Gledhill; Rodyk & Davidson.*

ANWAR v. PUBLIC PROSECUTOR

[A.Cr.J. (Wee Chong Jin C.J.) October 14, 1964]

[Singapore — Magistrate's Appeal No. 189 of 1964]

Criminal Procedure — Sentence — Caning — Imposition of — Circumstances of time and place to be considered.

The facts in this case were that during the second of the recent disturbances in Singapore on a day when the curfew was on the appellant with six or seven others were at Alexandra Road or off it. On being arrested after a chase and searched a knuckle duster was found in his possession. He was sentenced to one year's imprisonment and four strokes of the rotan. On appeal as to sentence,

Held: (1) the sentence of one year's imprisonment erred on the side of being excessive and in the circumstances should be reduced to one of three months;

(2) the court will normally not impose a sentence of caning unless violence has been used; but this was not a case where the court should take into consideration whether or not violence was in fact used; the circumstances of the time and place must be considered and as it was not the first of such disturbances but the second when the ordinary public in the State was subject to or witnessed such violence; taking that fact into consideration, the sentence of caning in this case was a perfectly proper one.

MAGISTRATE'S CRIMINAL APPEAL.

J. B. Jeyaretnam for the appellant.

Francis T. Seow (Senior Crown Counsel) for the Public Prosecutor.

Wee Chong Jin C.J.: This is probably the first case that has come up to this court with regard to the question of sentences in respect of persons who have committed offences during the period of the two disturbances we had in Singapore this year.

This offence was committed in September this year which was the second unfortunate episode we had here.

The facts were that during this episode on a day when the curfew was on the appellant with six or seven other male persons were at Alexandra Road or off it and on being arrested after a chase and search a knuckle duster was found in his possession. I cannot treat this as a case where the appellant was, so it is submitted, under stress and emotion during that particular period, and had thereby armed himself with an offensive weapon purely for the purpose of self defence. There was no question at that time of his having to be armed or have something in his possession which he could use as a weapon of defence during that period. There were no extenuating circumstances in that before that he might have met some trouble or was ever in a position where he had to defend himself because of the high feelings engendered during that period. That being so, possession of an offensive weapon during those unfortunate times must and can only be looked at as a very serious matter.

The question I have to decide now is whether the sentence of one year's imprisonment and four strokes of the rotan is a proper sentence and not manifestly excessive in those circumstances.

As regards the sentence of one year's imprisonment I am inclined to the view that it perhaps erred on the side of being excessive and I will accordingly reduce it to one of three months' imprisonment.

With regard to the sentence of caning although I accept that the court will normally not impose a sentence of caning unless violence has been used, I do not think this is a case where the court should take into consideration whether or not violence was in fact used. The circumstances of the time and place must be considered and we all know that this was not the first of such disturbances but the second when the ordinary public in this State was subject to or witnessed such violence as I hope we will never see again. Taking, as I must take, that fact into consideration, the sentence of caning in this case in my opinion is a perfectly proper one and that sentence must remain. I will accordingly allow the appeal only to the extent that the prison sentence is reduced to one of three months.

Prison sentence reduced; sentence of caning confirmed.

Solicitors: *David Marshall.*

YEGAPPAN v. DISTRICT COUNCIL CENTRAL, PROVINCE WELLESLEY (No. 2)

[O.C.J. (Hepworth J.) October 16, 1964]

[Penang — Originating Motion No. 6 of 1964]

Administrative law — Certiorari — Excess of jurisdiction — Acts of District Council whether administrative or judicial.

Municipal Ordinance, (Cap. 133), ss. 143 and 144A — Building By-Laws — Non compliance with Ordinance and Bye-Laws.

This was a motion for an order of *certiorari* to remove to the court and quash a decision of the District Council Central, Province Wellesley, approving the site plan and building plans constituting a housing scheme in Penang. The applicant was the owner of a bungalow and land adjacent to the land to be affected by the housing scheme. A preliminary point was raised and argued that on the facts of the case *certiorari* did not lie on the ground that the acts of the council were administrative and that in any event the evidence did not disclose that the council had acted in excess of jurisdiction. It was further argued that the council did not act in excess of its jurisdiction but what it had done was to misconstrue the bye-laws and had wrongfully exercised its jurisdiction.

Held: (1) as the applicant in this case was given a hearing for the purpose of considering what his submissions and objections were and the decision was arrived at after hearing him, the discretion which was exercised